IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROAM MOBILITY INC., Plaintiff, v. HH VENTURES, LLC DBA READY MOBILE AND READY WIRELESS, and READY WIRELESS, LLC, Defendants.	CIVIL ACTION NO. JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Roam Mobility Inc. ("Roam "), by and through its undersigned counsel, hereby brings the following Complaint against Defendants HH Ventures, LLC, doing business as Ready Mobile and Ready Wireless, and Ready Wireless LLC and, in support thereof, avers as follows:

PARTIES

1. Roam is a corporation organized and existing under the laws of Canada, with its principal place of business at 200 – 10451 Shellbridge Way, Richmond, British Columbia, Canada V6X 2W8. Roam does business throughout the Commonwealth of Pennsylvania and in this District.

2. Defendant, HH Ventures, LLC, doing business as Ready Mobile and Ready Wireless ("HH Ventures") is a corporation organized under the laws of Iowa, with its principal place of business at 965 Kacena Road, Suite A, Hiawatha, Iowa 52233. HH Ventures does business throughout the Commonwealth of Pennsylvania and in this District.

3. Defendant, Ready Wireless, LLC ("Ready Wireless") is a limited liability company organized under the laws of Iowa, with its principal place of business at 965 Kacena Road, Suite A, Hiawatha, Iowa 52233. Ready Wireless does business throughout the Commonwealth of Pennsylvania and in this District.

NATURE OF THE ACTION

4. Roam seeks a declaration that its offering, distribution, and sales of portable memory chips for mobile communication networks or subscriber identification module (SIM) cards ("Allegedly Infringing Products") under the trademarks READY SIM, READYSIM and READY.SIM.GO! (collectively referred to as the "READY SIM Marks") do not infringe or violate Defendants' rights in any way.

5. Through this action, Roam seeks a declaratory judgment that Defendants cannot use the federal trademark statute, the Lanham Act (15 U.S.C. § 1051 et seq.), together with state statutory and common law, to seek an injunction and damages for the sales of the Allegedly Infringing Products because such sales, under the READY SIM Marks, did not, do not and will not cause a likelihood of confusion with Defendants' purported marks identified by U.S. Trademark Registration No. 4402904, READY, for "Prepaid wireless telephones, magnetically encoded phone cards, mobile phones" and "Cellular telephone services; Communication services, namely, transmission of voice, audio, visual images and data by telecommunications networks, wireless communication networks, the Internet, information services networks and data networks," and Defendants' other marks pleaded in the Consolidated Notice of Opposition filed with the U.S. Patent and Trademark Office ("PTO"), including the READY MOBILE word mark, Reg. No. 3083865, for "Prepaid wireless phones and magnetically encoded phone calling cards" ("Defendants' READY MOBILE Marks" or "Defendant's Marks"). A copy of the Consolidated Notice of Opposition is attached as Exhibit "A."

6. Beginning on or about February 18, 2013, Defendants have engaged in a pattern of aggressive conduct, which under the circumstances, has given Roam a reasonable apprehension of litigation.

7. This is an action under 28 U.S.C. §§ 2201 and 2202 for a declaration that there is no infringement of Defendants' Marks, unfair competition, false designation of origin.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the claims that relate to trademark infringement under 15 U.S.C. § 1119, 28 U.S.C. § 1338, and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. This Court has the authority to issue a declaratory judgment under 28 U.S.C. §§2201 and 2202.

9. Venue in this district is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims at issue in this action occurred, or a substantial part of property that is the subject of this action is situated in this District.

BACKGROUND OF THE DISPUTE

Roam, its Business and its Marks

10. Based in Vancouver, Canada, Roam is a telecommunications provider focused on delivering innovative, affordable solutions and products for cellphone and smartphone users around the world. In particular, Roam is a leader in roaming replacement wireless services for international travelers planning to visit or who have arrived in the U.S.

11. Roam's SIM cards and unlocked phones connect Canadians and other international travelers to United States to affordable talk, text and data while in the US.

12. Upon information and belief, Roam is the first company in the U.S. to offer self-activating prepaid SIM cards.

13. Launched in 2012, Roam provides telecommunications products without the need for contracts and commitments required by traditional wireless providers such as Verizon and AT&T. Roam's products give its customers the freedom and flexibility to talk, text and surf the internet from their wireless handsets whenever they want with no commitments or retailer set up.

14. Roam offers and sells its innovative products online (through its own-operated websites, roammobility.com and readysim.com, and online retailers such as rakuten.com and walmart.com), through selected brick and mortar retailers and authorized distributors. Screenshots of Roam's website and images of READY SIM cards are attached as Exhibit "B."

15. Roam owns the following U.S. Trademark Applications (collectively referred to as "Applications for the READY SIM Marks"):

- Application No. 85/753,927 for the word mark READYSIM in Class 009 for "Portable memory chips for mobile communication networks."
- Application No. 85/754,017 for the word mark READY.SIM.GO! in Class 009 for "Portable memory chips for mobile communication networks."
- Application No. 85/775,897 for the word mark READY SIM in Class 009 for "Portable memory chips for mobile communication networks."

Trademark Status & Document Retrieval (TSDR) printouts from U.S. Patent and Trademark Office database showing the prosecution histories of these applications, together with selected documents from the history of Application Serial Number 85/753, 927 (namely, the letter of protest apparently filed by Defendants and the results of the examination) are attached as Exhibit "C."

16. The PTO searched its records, determined that Roam's Applications for its READY SIM Marks do not cause a likelihood of confusion with any third party's mark including Defendants' Marks, specifically their READY MOBILE word mark, Registration No. 3083865 (then Application Serial No. 78539587), and published Roam's READY SIM Marks for opposition. See Exhibit "C."

17. The PTO also did not find Roam's READY SIM Marks to cause a likelihood of confusion with Defendants' READY mark (then Application Serial No. 85828248, which later resulted to Registration No. 4402904). See Exhibit "C."

Defendants, Their Business and Their Marks

18. Upon information and belief, Defendants provide telecommunication services, namely providing prepaid cellular phone services to customers. Screenshots of Defendants' websites (readymobile.com and readywireless.com) are attached as Exhibit "D."

19. Upon information and belief, Defendants are a mobile virtual network operator (MVNO) and resellers for CDMA network operators and provide its customers with nationwide coverage.

20. Upon information and belief, Defendants provide or sell handsets that are ready for use and wireless (mobile) plans, under their READY MOBILE mark to their customers, but do not sell portable memory chips for mobile communication networks or SIM cards.

21. Upon information and belief, Defendants claim that they own the following marks (referring to them as Defendants' "Family of READY marks") that include READY as an element of the mark:

- READY word mark;
- READY MOBILE word mark;
- READYMOBILE PCS logo mark;
- READYBROADBAND logo mark;
- GET READY word mark; and
- READY BROADBAND word mark

22. Upon information and believe, Defendants claim that they hold seven registrations covering the "individual members of [Defendants'] Family of READY marks."

Defendants' Aggressive Tactics and Conduct

23. On or about February 18, 2013, Defendants sent a letter to Roam objecting to its U.S. Applications for the READY SIM Marks and Roam's "introduction of the Ready Sim name for use in the prepaid market segment." A copy of the February 18, 2013 letter is attached as Exhibit "E."

24. Roam disagreed with Defendants' attempt to monopolize the word READY in the entire telecommunications industry and noted numerous other parties that use and/or have registered or in the process of registering trademarks containing the word "Ready" for telecommunication services and products.

25. On or about April 23, 2013, Defendants attempted to interfere with the PTO's examination process by filing a letter of protest and urging the PTO to reconsider its examination and refuse Roam's READY SIM Marks on a likelihood of confusion ground with Defendants' READY MOBILE Marks. See Exhibit "C."

26. The PTO considered Defendants' submission and concluded that there should be no likelihood of confusion and eventually approved Roam's applications for the READY SIM Marks for publication.

27. On or about December 20, 2013, Defendant HH Ventures filed a Consolidated Notice of Opposition against Roam's applications for the READY SIM Marks. The consolidated proceeding is No. 91214134. See Exhibit "A."

28. Roam denied Defendant HH Ventures' claims of a likelihood of confusion in its Answer to the Notice of Opposition.

29. In May-early June 2014, the parties began exchanging discovery responses.

30. On or about June 5, 2014, Defendants threatened to sue "Roam's suppliers, distributors and vendors" and drag them into the dispute between Defendants and Roam.

31. Based on all the circumstances discussed above, Roam reasonably anticipates that Defendants will file an unannounced infringement suit against Roam as well as its contract partners operating in the United States (suppliers, distributors and vendors).

Defendants' Allegations and Absence of Likelihood of Confusion

32. As explained below, Defendants' allegations lack merit, and Roam's READY SIM Marks and actions do not constitute infringement of Defendants' Marks, unfair competition, or false designation of origin.

33. Defendants' allegations lack merit because Defendants cannot establish a likelihood of confusion between Roam's READY SIM Marks and Defendants' Marks.

34. In no instance does Roam use the word mark READY or the designation READY by itself or any of Defendants' Marks on any product it sells or plans to sell.

35. Roam's READY SIM Marks and Defendants' Marks must be compared in their entireties as they are actually used by the Parties in their respective marketplaces.

36. The respective Parties sell different and unrelated products to different and not overlapping categories of consumers, through different and not overlapping channels of trade.

37. The Parties have mutually sold their products and services online for many months, without conflict or confusion of any kind.

COUNT I.
Declaratory Judgment that Roam's Marks Do Not Infringe Defendants' Marks Under Federal, State, or Common Law

38. Roam repeats and re-alleges its specific assertions in paragraphs 1 through 37 as if expressly set forth herein.

39. Roam's reasonable apprehension of imminent suit raises an actual and concrete controversy between the Parties as to whether Roam's READY SIM Marks are likely to cause consumer confusion with Defendants' Marks under federal, state, or common law.

40. Roam and Defendants have adverse and antagonistic interests in the subject matter of the dispute, case, and/or controversy.

41. There is no legal or factual basis for Defendants' claim that Roam's READY SIM Marks have caused, or are likely to cause, confusion with Defendants' Marks, nor are they likely to deceive as to the affiliation, connection, or association of Roam with Defendants (of which there is none) or as to the origin, sponsorship, or approval of the products sold by Roam.

42. Roam's READY SIM Marks, on their own and as they are actually used on products advertised and sold, differ in sound, meaning and appearance from Defendants' Marks, and create a different impression in the minds of consumers than do Defendants' Marks.

43. Roam seeks a declaratory judgment that its past and continued use and registration of the READY SIM Marks has not and does not jeopardize the goodwill, if any, symbolized by Defendants' registered or unregistered trademarks, nor does it cause any other injury to Defendants under the Lanham Act, Pennsylvania trademark common law, or Pennsylvania statutory law.

44. Roam is, therefore, entitled to declaratory judgment that Roam's READY SIM Marks do not infringe Defendants' Marks under federal, state, or common law.

COUNT II.
Declaratory Judgment that Roam's Actions Does Not Constitute Unfair Competition or False Designation of Origin Under Federal, State, or Common Law

45. Roam repeats and re-alleges its specific assertions in paragraphs 1 through 44 as if expressly set forth herein.

46. A real and actual dispute, case, and/or controversy exists between the Parties as to whether Roam unfairly competes with Defendants when it uses its READY SIM Marks to identify its products.

47. Roam and Defendants have adverse and antagonistic interests in the subject matter of the dispute, case, and/or controversy.

48. Roam seeks a declaratory judgment that its past and continued use and registration of the READY SIM Marks, READY SIM trade name and <readysim.com> domain name are not intended or likely to cause confusion, mistake, or deception as between the source, association, or affiliation of the Parties' respective products, services, or businesses, and do not unfairly compete with Defendants, under the Lanham Act, Pennsylvania unfair competition common law, or Pennsylvania statutory law.

49. Roam further seeks a declaratory judgment that its past and continued use and registration of the READY SIM Marks, READY SIM trade name and <readysim.com> domain name do not cause any injury to Defendants under the Lanham Act, Pennsylvania unfair competition common law, or Pennsylvania statutory law.

COUNT III.
Declaratory Judgment On Equitable Grounds

50. Roam repeats the allegations contained in paragraphs 1 through 49 of this Complaint, as if fully set forth herein.

51. Defendants have been fully aware of Roam's use, promotion and registration of its family of READY SIM Marks, for many months.

52. Until the filing of a Notice of Opposition, Defendants did not raise any issue with respect to Roam's use, promotion or registration of its family of READY SIM Marks.

53. Roam relied on Defendants' silence and inaction in applying to register, using, and promoting its family of READY SIM Marks.

54. Roam would be unfairly prejudiced by any attempt by Defendants to institute any action or proceeding with respect to Roam's use or registration of its READY SIM Marks.

55. Defendants are barred from objecting to, or instituting any action or proceeding with respect to, Roam's use or registration of its READY SIM Marks in connection with its products, based on laches, acquiescence, estoppel and/or other equitable principles.

PRAYER FOR RELIEF

WHEREFORE, Roam Mobility Inc. respectfully requests that this Court grant a declaratory judgment and other proper and just relief as follows:

1. Roam's past, present and continued use and registration of the READY SIM Marks in connection with its business, use of the READY SIM trade name and <readysim.com> domain name do not and will not infringe any of Defendants' trademark or trade name rights, or compete unfairly with Defendants, or falsely designate the origin of Roam's products or services, or otherwise constitute a violation of any of Defendants' rights;

2. Defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation or otherwise in privity with them, be permanently enjoined and restrained from instituting, prosecuting or threatening any action against Roam, or any of its affiliates, Roam's suppliers, distributors and vendors or anyone in privity with them, with respect to Roam's use and registration of and Roam's suppliers, distributors and vendors nominative use of the READY SIM Marks; and

3. That the Court assess the costs of this action and Roam Mobility Inc.'s attorneys' fees against Defendants allowable by U.S. and Pennsylvania state law; and

4. Any and all such other relief that the Court may deem just and proper.

Respectfully submitted,

BY:______________________________

Lewis F. Gould, Jr. (Pa. No. 4432)
Patrick J. Kearney (Pa. No. 91046)
Maxim A. Voltchenko (Pa. No. 201274)
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
Phone (215) 979-1000
Fax (215) 979-1020

Dated: June 17, 2014

DEMAND FOR JURY TRIAL

Roam Mobility Inc. hereby demands a jury trial on all issues and claims for relief that are so triable.

BY:________________________________

Lewis F. Gould, Jr. (Pa. No. 4432)
Patrick J. Kearney (Pa. No. 91046)
Maxim A. Voltchenko (Pa. No. 201274)
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
Phone (215) 979-1000
Fax (215) 979-1020

Attorneys for Plaintiff Roam Mobility Inc.

Dated: June 17, 2014